


UNHCR

 United Nations High Commissioner for Refugees
 Haut Commissariat des Nations Unies pour les réfugiés

UNHCR Position regarding Asylum-Seekers and Refugees from the Chechen Republic, Russian Federation

- 10/11'04
- 1 Since the February 2003 UNHCR "Paper on the Situation of Asylum-Seekers from the Russian Federation in the context of the situation in Chechnya", some positive developments have taken place in the Chechen Republic, Russian Federation (hereinafter "Chechnya"). These include the adoption of a Constitution, the organisation of presidential elections, a number of amnesty declarations and the introduction of compensation mechanisms for lost housing and property. Despite this, the overall situation in Chechnya still raises grounds for serious concern due to targeted persecution, including arbitrary detentions, widespread violence, insecurity and violations of human rights, as well as ongoing hostilities significantly affecting the civilian population and leading to continued forced displacement. Moreover, Chechen militants have claimed responsibility for an increasing number of attacks outside Chechnya, including the assault on law enforcement structures in the Republic of Ingushetia, in June 2004, and the horrific attack in Beslan, North Ossetia-Alania, in September 2004, which led to the death of over 430 civilians in one week alone, including over 100 children.
 - 2 Developments relating to Chechnya are widely documented in public reports including from the Council of Europe and international as well as national human rights groups. In its *Concluding Observations on the Russian Federation* of 6 November 2003, the United Nations Human Rights Committee remained "deeply concerned about continuing substantiated reports of human rights violations in the Chechen Republic, including extrajudicial killings, disappearances and torture, including rape".
 - 3 The UN security assessment maintains Chechnya at Phase V, preventing the United Nations (including UNHCR) from establishing a presence in Chechnya. As a result, UNHCR cannot effectively monitor the situation of internally displaced persons or refugees who return to Chechnya. Some limited presence of national staff is currently under discussion.
 - 4 Considering this situation and the lack of a genuine internal flight alternative within the Russian Federation for Chechens,¹ UNHCR maintains the position² that:

Chechens³ whose place of permanent residence was the Chechen Republic prior to their seeking asylum abroad should be considered in need of international protection⁴, as they either:

¹ See, in particular, Section II of the February 2003 UNHCR "Paper on the Situation of Asylum-Seekers from the Russian Federation in the context of the situation in Chechnya".

² Section VIII, Recommendations, para 83 and 84, February 2003 UNHCR "Paper on the Situation of Asylum-Seekers from the Russian Federation in the context of the situation in Chechnya".

³ Although the title of the paper refers to "asylum-seekers and refugees", the content only relates to ethnic Chechens, as (i) it is understood that the caseload from Chechnya is primarily Chechen; (ii)

a) have a well-founded fear of persecution and would therefore qualify as refugees under the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol*; and/or

b) have left Chechnya owing to serious and indiscriminate threats to life, physical freedom or freedom resulting from generalised violence or events seriously disturbing public order.

5 Based on the above criteria, States may choose to provide protection under a variety of mechanisms, including the following:

- refugee recognition on a *prima facie* basis;
- individual determinations through which refugee status may be accorded on the above criteria. In the event of non-recognition, complementary protection should be made available;
- provision of lawful residence or other granting of protection on a temporary basis, *de jure* or otherwise, that gives access to basic rights as mentioned in paragraph 6 below.

6 For those States not providing formal refugee status, the minimum rights provided to Chechens in need of international protection should include, but not be limited to, the following:

- protection from *refoulement*;
- no penalty for entry to the country of asylum, if otherwise illegal;
- some form of status to allow legal stay;
- no discrimination;
- registration and documentation;
- respect for family unity;
- access to health care facilities;
- access to education facilities;
- access to accommodation;
- access to means of self-sufficiency;
- freedom of movement;
- access to civil registration (births, marriages and deaths);
- access to the justice system;
- access to UNHCR;
- support for individuals with special needs (such as those disabled or traumatised).

7 Notwithstanding the above, international refugee protection should not be extended to any person with respect to whom it has been found – after an individual determination – that there are serious reasons to consider that he or she is individually responsible for acts falling within the scope of Article 1F of the

ethnic Russians may have an internal flight alternative in the RF, unless they lack the capacity to register for residence elsewhere or have a specific claim under Art. 1 of the 1951 Convention; and (iii) persons from an ethnically mixed background as well as persons who are non-ethnic Chechens and non-ethnic Russians should be considered on a case by case basis.

⁴ With regard to exclusion from international refugee protection, please see paragraph 7.

1951 Geneva Convention Relating to the Status of Refugees. Such a person is excluded from international refugee protection but may still be protected by other human rights instruments. Independent asylum claims by family members of such persons should be examined on their own merits. Therefore, those Chechens whose background indicates involvement in activities which could trigger the application of Article 1F of the 1951 Convention relating to the Status of Refugees should be given interviews for individual refugee status determinations. Where information comes to light that Article 1F would have been applicable to a refugee at the time of recognition (individually or on a *prima facie* basis), this may lead to the cancellation of refugee status. The refugee status of those who engage in conduct falling within the scope of Article 1F(a) or 1F(c) subsequent to recognition may be subject to revocation.

- 8 Hosting States have the primary responsibility in terms of providing protection and assistance to Chechen refugees and asylum-seekers. UNHCR Offices will, to the extent resources allow, offer needed support to host States in this regard. Such support may include training, advice, capacity building and other forms of assistance.
- 9 For those Chechens seeking asylum whose place of permanent residence was not the Chechen Republic, UNHCR recommends that individual refugee status determination be undertaken. Those asylum-seekers who, after a fair and efficient examination of their claim, have not been found to be in need of international protection as they can return and reside in safe parts of the Russian Federation may be returned.
- 10 A temporary return to Chechnya without the re-establishment of permanent residence should not be considered as a ground for cessation of refugee status as there still may be a need for continued protection. Reasons for a temporary return to Chechnya could, for example, include the necessary renewal of documents or registration for compensation for lost housing and property.
- 11 Host State authorities should take note of the recent replacement of the Soviet model passports (internal passports) by passports of citizens of the Russian Federation and should facilitate any action that ensures that their holders are not in danger of becoming *de facto* stateless. These internal passports remain the primary form of personal identification for many Chechens who have sought asylum abroad.
- 12 Given the security situation inside Chechnya, UNHCR does not, at the present time, promote voluntary repatriation for Chechens. However, this does not preclude UNHCR facilitation of voluntary repatriation, when such an option is the result of a free and informed choice.

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